

Lessors of tangible personal property under true leases in Illinois, are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

December 17, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 8, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I represent an Illinois company contemplating the acquisition of a new business aircraft from the U.S. manufacturer and its affiliated finance company. Prior to finalizing the terms of any such transaction, we would like to determine the Illinois tax ramifications, if any, of the initial transaction and monthly payments. Specifically, those details are as follows:

1. Price of aircraft - approximately \$2.6 million
2. Security deposit - approximately \$150,000
3. Term of lease - 10 years
4. Monthly rent - approximately \$23,000 for first five years, \$30,000 for final five years
5. Option to purchase aircraft at end of lease - approximately \$600,000

My client intends to sub-lease the aircraft to a F.A.A. Part 135 (charter) operator. It is contemplated that the majority of the aircraft's use will be by the Charter Operator, and a minority of the time by my client's own business use. Under these circumstances, will my client be liable for any Illinois taxes on account of the contemplated transaction? If so, what?

Would the answer be the same if my client, with the manufacturer's consent, deducted all of the allowable depreciation expenses under federal law?

If I can elaborate or answer any questions, please let me know. I look forward to hearing from you.

From the limited information contained within your letter, we are unable to give you the determination you request. Generally, when aircraft are purchased

from retailers, the gross receipts received are subject to tax. An aircraft purchased from other than a retailer may qualify as an occasional sale and would not be subject Retailers' Occupation Tax, Use Tax, or Vehicle Use Tax liability. See 86 Ill. Adm. Code 150.305(d), enclosed. Please note that Illinois requires an aircraft owner to provide proof that the Use Tax was paid or that no Use Tax was due on the purchase of the aircraft before the State will allow the aircraft to be registered in Illinois.

Leases of real property are not subject to Retailers' Occupation Tax and Use Tax. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: true leases and conditional sales.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois, are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. No tax is imposed on rental receipts by the State of Illinois. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers are registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed.

Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

The Retailers' Occupation Tax Act provides an exemption for tangible personal property sold to interstate carriers for hire for use as rolling stock moving in interstate commerce or to lessors of such interstate carriers. See 35 ILCS 120/2-5(12) and (13) (1996 State Bar Edition). The Use Tax Act provides for the same exemption. See 35 ILCS 105/3-55 (1996 State Bar Edition). The exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The

carrier must move in interstate commerce on a regular and frequent basis in order to qualify for the exemption.

When making a purchase of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. If the purchasers are lessors, the purchasers must give the sellers a certification to that effect identifying the lessee interstate carriers for hire. Form RUT-27, Rolling Stock Affidavit, which is signed by the purchasers, is used to provide the required certification in order to execute the statutory exemption.

Please note that for a lease transaction to qualify for the rolling stock exemption, the lease must be for 1 year or longer and be in effect at the time the property is purchased. Further, the lease cannot have provisions providing for recall and use of the property by the lessor. We encourage you to not be cavalier in setting up these transactions.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.